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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,871	07/27/2006	Ralf Peter Mueller	1401D-003 (CI0111US)	7341
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EXAMINER				
ALIE, GHASSEM				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/565,871

Applicant(s)

MUELLER ET AL.

Examiner

GHASSEM ALIE

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/17/08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 41, 43, 44, 50-56, 68, 69 and 76-82 is/are pending in the application.
- 4a) Of the above claim(s) 76-82 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 41, 43, 44, 50-56, 68 and 69 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Election/Restrictions

1. Applicant's election of invention I-III (claims 41, 43-44, 50-56, 68-59 and 76-82) and Subgroup IA-IC (claims 43-44, 68 and 69) in a reply filed on 10/17/08 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Upon further consideration, claims 41, 43-44, 50-56, 68-59 which were previously examined will be examined. New claims 76-82 which are directed to non-elected Subgroups ID and IE are withdrawn.
2. Claims 76-82 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species, there being no allowable generic or linking claim.

Claim Objections

3. Claim 41, 50 and 53 are objected to because of the following informalities: in claim 41, line 5-6; "a counterweight, which is axially displaced in the opposite direction from the cutting blade" should be --a counterweight, which is axially displaced away from the cutting blade--. It should be noted that it is not clear what "the opposite direction from the cutting blade" means. Is cutting blade moves in an opposite direction than the counterweight? What is considered to be the direction of the cutting blade? It is not clear what the direction of the cutting blade is. Similarly, claims 50 and 53 should be changed as claim 41.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

a person shall be entitled to a patent unless –
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 41, 43-44, 50-54 and 68-69 are rejected under 35 U.S.C. 102(b) as being anticipated by Weber (WO 03/028963 A1). Regarding claim 41, Weber teaches a slicing machine including a rotating cutting blade 10, which is mounted so as to be displaceable parallel to a rotation axis of rotation of the blade. Weber also teaches that the slicing machine 1 also includes a counterweight which is axially displaced in the opposite direction from the cutting blade 10. It should be noted that the flange or end portion of the first part 5 defines the counterweight. It should be noted that a counterweight is interpreted as any weight that counters the weight of the blade. In this case, any part of the spindle or drive shaft that counters the weight of the blade is considered to be a counterweight. The counterweight may be moved in an opposite direction independent from the direction of the blade 10 by at least rotation of the threaded rod. See Fig. 1 and the translated abstract in Weber.

Regarding claims 43-44 and 68-69, Weber teaches everything noted above including that the displacement of the cutting blade 10 takes place independently of a rotational speed of the cutting blade; the cutting blade is mounted to a drive shaft so as to be displaced along the drive shaft 5; the cutting gap also could be adjusted when the blade is stationary or rotating; and the axial position of the blade is not substantially changed after it has come onto contact with an adjusting limit stop. It should be noted that the upward protrusion of the end portion of the drive shaft 5 is considered to be the adjustment limit with could be considered as a zero position where the axial position of the blade is not changed.

Regarding claims 50-52, Weber teaches everything noted above including a method for axial displacement of the cutting blades during operation. Weber also teaches a

counterweight on a drive shaft 5 of the cutting blade 10 is displaced in the opposite direction from the cutting blade 10. Weber also teaches that the displacement of the counterweight and the cutting blade are synchronously. Weber also teaches that the displacement of the cutting blade 10 or the counterweight is achieved by a spindle 2.

Regarding claims 53-54, Weber teaches everything noted above including a method of using at least one counterweight in a slicing machine including the steps of displacing the at least one counterweight in the opposite direction from a cutting blade 10 to stabilize running of the cutting blade 10 of a slicing machine, wherein the cutting blade includes an axis of rotation, and the cutting blade is mounted so as to be displaceable parallel to the rotation axis of the blade. In addition, Weber teaches that the forces and/or movements arising during displacement of the blade are inherently compensated.

6. Claims 41, 43-44, 53-54 and 68-69 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmidt (DE 101 55 408 A1). Regarding claim 41, Schmidt teaches a slicing machine including a rotating cutting blade 5 which is mounted so as to be displaceable parallel to a rotation axis of the blade. Schmidt also teaches that the slicing machine includes a counterweight 5' which is displaced in the opposite direction from the cutting blade. It should be noted that the counterweight is defined by other blade or disc 5' that is independently displaceable with respect to the blade 5. The displacement mechanism 15 could displace the blade 5 independently in opposite direction than the counterweight 5'. See Figs. 1-5 and abstract translations in Schmidt. It should be noted that the abstract translation of Schmidt is included in this Office Action.

Regarding claims 43-44 and 68-69, Schmidt teaches everything noted above including that the displacement of the cutting blade 5 takes place independently of a rotational speed of the cutting blade; the cutting blade is mounted on a drive shaft 4 so as to be displaced along the drive shaft 4; a cutting gap also could be adjusted when the blade is stationary or rotating; and an axial position of the cutting blade is not substantially changed after it has come onto contact with an adjusting limit stop. It should be noted that the slicing machine inherently includes a portion that limits the axial displacement of the blade 5. This could be considered as a zero position where the axial position of the blade is not changed. It should also be noted that the adjustment mechanism 15 inherently includes a limit that limits the adjustment of the blade. This also could be considered as an adjusting limit stop.

Regarding claims 53-54, Schmidt teaches everything noted above including a method of axially displacing the at least one counterweight in the opposite direction from a cutting blade 5 to stabilize running of the cutting blade 5 of a slicing machine, wherein the cutting blade includes an axis of rotation, and the cutting blade is mounted so as to be displaceable parallel to a rotation axis of the blade. In addition, Schmidt also teaches that the forces and/or movements arising during displacement of the blade are inherently compensated.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 50-52, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt. Regarding claims 50-52, Schmidt teaches everything noted above including a method for axial displacement of the cutting blade during operation. Schmidt also teaches a step of displacing a counterweight 5' on a drive shaft 4 of the cutting blade 5. Schmidt also teaches that the displacement of the counterweight and the cutting blade are achieved synchronously, and the displacement of the cutting blade 10 or the counterweight is achieved by a spindle. Schmidt does not explicitly teach that the counterweight 5' moves in opposite direction than the blade 5. However, it would have been obvious to a person of ordinary skill in the art to move the counterweight in Schmidt's slicing machine device in an opposite direction than the blade, since the slicing machine is cable of performing this function and it would produce the same result which is adjusting the distance between the counterweight 5' and the cutting blade 5.

9. Claims 55-56, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber or Schmidt. Regarding claim 55-56, Weber or Schmidt teaches everything noted above, but Weber or Schmidt does not explicitly teach that the zero point may be adjusted by axial displacement of the cutting blade and the torque of the drive of the cutting blade is measured during displacement. However, Official Notice is taken that the use of zero adjustment mechanism for the rotating blade and torque measuring of a drive if a rotating blade is well known in the art such as is evidence in Weber (W0 03/022537).

Response to Amendment

10. Applicant's remarks filled on 02/25/08 and 04/16/08 do not include arguments with respect to rejection of the claims over the prior art of the record. In addition, the amendments

to the claims do not appear to overcome the rejection of the claims over the prior art of the record. Claims broadly set forth a displacement of a counterweight in an opposite direction to a cutting blade. Claims do not specifically claim the detail structure of the counterweight or the slicing machine as a whole. Moving a counterweight or a weight in a direction opposite from a cutting blade is well known in the art such as taught by Weber and Schmidt. Claims do not set forth any limitation that is not disclosed in Weber or Schmidt.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (571) 272-4501. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, SEE <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ghassem Alie/

Primary Examiner, Art Unit 3724

December 31, 2008